IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 539 of 2007
WITH
CIVIL APPLICATION No. 5387 of 2007
IN
SPECIAL CIVIL APPLICATION No. 1278 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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THE REGIONAL PROVIDENT FUND COMMISSIONER - Appellants
Versus
M/S. MANIBHADRA SALES CORPORATION & 1 - Respondents

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Appearance :
MR NIRAL R MEHTA for Appellants.
MR KM PATEL for Respondent.
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CORAM :	HONOURABLE MR.JUSTICE A.M.KAPADIA
	and
	HONOURABLE MR.JUSTICE K.A.PUJ

Date : 11/04/2007
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. ADMIT. Mr. K. M. Patel, learned advocate for respondent waives service of notice of admission of appeal. At the joint request of the parties, the appeal is heard and disposed off by this order.

2. The appellants – original respondents i.e. Regional Provident Fund Commissioner and another have filed this Letters Patent Appeal under Clause 15 of the Letters Patent challenging the order passed by the Learned Single Judge of this Court on 12.02.2007 in Special Civil Application No.1278 of 2007 whereby the Learned Single Judge has disposed of the said petition by holding that pending the appeals before

the Appellate Tribunal, the order passed by the Appellate Tribunal is modified to the effect that the respondent may be allowed to sell the movable properties under attachment, on condition that, before removing any of the assets, the respondent will place the sell agreement / invoice(s) on the records of ATA No. 579(5) of 2006 pending before the Appellate Tribunal. The attachment against the land would be subject to any other order made by the Tribunal, continued pending hearing of the appeal. The Learned Single Judge has also directed the respondent to file an undertaking to the effect that the land in question is of exclusive ownership of the respondent and that the said land is free from any encumbrances and is in absolute possession of the respondent. As per the said order of the Learned Single Judge, an undertaking is already filed by the respondent before this Court and copy thereof is also shown to this Court.

3. It is the case of the appellant that the respondent herein i.e. M/s. Manibhadra Sales Corporation –

original petitioner, is defaulter of the organization and, therefore, to execute recovery certificates, order of attachment of movable as well as immovable property was passed. The said orders were challenged by the respondent by way of statutory appeals before the Employees Provident Fund Tribunal and the Tribunal has granted status-quo order in favour of the respondent. The respondent has thereafter filed Special Civil Application No.1278 of 2007 before this Court seeking modification in the order of the Tribunal and seeking permission to sell the movable property. The Learned Single Judge has passed an order on 12.02.2007 allowing the respondent to sell movable property by directing him to file undertaking as to immovable property and thereby modified the order of the Tribunal.

4. This order of the Learned Single Judge is under challenge in the present appeal.

5. Heard Mr. N. R. Mehta, learned advocate appearing for the appellant and Mr. K. M. Patel, learned

advocate appearing for the respondent.

6. Mr. N. R. Mehta, learned advocate appearing for the appellant has pointed out that in Special Civil Application No. 10764 of 2006 filed by the respondent before this Court, the respondent was restrained by an order dated 23.06.2006 from transferring or assigning the movable property worth Rs.8 Lacs till the remaining amount was paid by the respondent to the present appellant authorities. He has further submitted that the total dues outstanding from the respondent are about Rs.10,84,000/- on account of 7-A liability and about Rs.18 Lacs on account of 14-B and 7-Q liabilities. As against this, the respondent has paid Rs.6 Lacs. The appeals against both the orders are pending before the appellate tribunal. Since the Learned Single Judge has granted permission to sell the movable on condition to file undertaking to the extent that immovable property is in exclusive possession of the respondent and there is no encumbrance thereon, we are of the view that interest of justice would

better be served if the order of the Learned Single Judge is modified to the extent that the present respondent shall deposit Rs. 5 Lacs against the dues of the 7-A of the Act with the present appellant within six weeks from today and on that condition, the appellants will remove the attachment on the movables and permit them to sell the movables. Accordingly, we hereby allow this appeal to the extent of modification of the order passed by the Learned Single Judge and direct the present respondent to deposit Rs. 5 Lacs out of the sale proceeds of the movables, within six weeks from today with the appellant and on this condition, the attachment on movables is removed forthwith so as to enable the respondent to sell the movables. An undertaking to deposit Rs. 5 Lacs with the appellant within six weeks from today shall be filed before this Court by the respondent within one week from today. The deposit of Rs. 5 Lacs by the respondent with the appellant pursuant to this order is subject to the final outcome of the appeals which are pending before the appellate tribunal.

7. Subject to the aforesaid direction and observation, this appeal is accordingly disposed of.

8. In view of the disposal of the appeal, there shall be no order in Civil Application. It is accordingly disposed off.

9. Direct service is permitted.

[A. M. KAPADIA, J.]

[K. A. PUJ, J.]

Savariya